

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

PAUL POGUE and
PAUL POGUE, in his capacity as
owner of SURVEYORS' PARK

Plaintiffs,

v.

TONY CHANDLER, et al.,

Defendants.

CIVIL ACTION NUMBER

2:06-cv-148-MHT

State of Alabama
County of Chilton

AFFIDAVIT OF DANNY CLARK

Before me, a Notary Public in and for said County and State, personally appeared
Danny Clark and, after having been by me first duly sworn, deposes and says under oath
as follows:

1. My name is Danny Clark. I am over (19) nineteen years of age and have
personal knowledge of the facts as are set out herein.

2. I am employed by the Alabama Forestry Commission (AFC) as a Forestry
Specialist in the Chilton County office. I have been employed by the Alabama Forestry
Commission for 20 years.



3. I completed training to become a law enforcement officer in the state of Alabama in 1990. I was commissioned as a law enforcement officer for the Alabama Forestry Commission on December 4, 1990.

4. Since receiving my law enforcement commission, I have personally participated in more than 200 investigations of alleged violations of the forestry-related laws of Alabama. 103 of these investigations resulted in criminal charges being filed. The remainder of the investigations resulted in no criminal charges being filed. In the cases in which no criminal charges were filed, I did not find sufficient evidence that a crime occurred to support the filing of criminal charges. In many of these cases, I advised the complainants that civil remedies might be available to them.

5. I know the plaintiff, Paul Pogue. At approximately 8:30 a.m. on July 5, 2005, I was contacted by Southwest Regional Forester Gary Cole concerning a report of an alleged unauthorized cutting of timber in Perry County, Alabama. Because AFC Southwest Regional Investigator Tony Chandler was on vacation, Mr. Cole asked me to conduct an initial investigation. I immediately contacted Mr. Pogue by telephone and made arrangements to meet him at the site of the alleged unauthorized cutting at 10:00 a.m. on the same day.

6. I contacted Cedric Hudson, manager of the Forestry Commission's office in Perry County, and asked him to meet me at the site. Mr. Hudson and I arrived at the site at 10:00 a.m. Mr. Pogue arrived at the site at 12:20 p.m. Todd Slusher arrived at the site at approximately 2:00 p.m.

7. Upon talking to Mr. Pogue and Mr. Slusher, I determined that Mr. Pogue had signed a contract with Mr. Slusher (doing business as Cherokee Timber Company) to

harvest some trees on the property. An individual named Mark Kynard was performing the actual cutting of the timber on behalf of Mr. Slusher. Mr. Pogue claimed that Mr. Kynard had harvested timber on what Mr. Pogue stated was the wrong side of a road that ran through the property. Mr. Kynard had harvested approximately three acres of trees from an area that was not included in the contract between Mr. Pogue and Mr. Slusher.

8. It was my professional opinion based on my training and experience in law enforcement that the unauthorized cutting was unintentional and that there had been no criminal intent on the part of Mr. Kynard or Mr. Slusher. Similarly, Mr. Kynard was not criminally trespassing because he had a right to enter onto the property under the timber contract.

9. Under Alabama law, the crime of trespassing requires that the violator “knowingly” enter or remain on restricted property. I concluded that Mr. Kynard did not know he was cutting in the wrong area and removed himself and his equipment immediately once Mr. Pogue told him he was cutting in the wrong area. I did not arrest anybody because it was clear to me that no crime had been committed.

10. I advised Mr. Slusher that he was legally bound to pay Mr. Pogue double the fair market value of the timber under Alabama law. Section 9-13-62 of the Code of Alabama states that where an unauthorized cutting of timber occurs, the individual or entity that cuts the timber is liable for twice the fair market value of the timber irrespective of whether the cutting was done knowingly or unknowingly. I advised Mr. Slusher and Mr. Pogue to work out an agreement and that this was a civil matter between them. I then left the scene.

11. Mr. Pogue, Mr. Slusher, Mr. Hudson, myself, and a female who arrived in the vehicle with Mr. Pogue were the only individuals at the scene. The female who arrived with Mr. Pogue did not identify herself and was not introduced to me. There were no employees or representatives of International Paper Company at the scene at any time on July 5, 2005. July 5, 2005 is the only date I have been on the property.

12. Following the meeting on July 5, 2005, I wrote a brief incident report (Attachment A) and turned the investigation and handling of the matter over to AFC Southwest Regional Investigator Tony Chandler after he returned from vacation. I also briefed Investigator Chandler as to the events of July 5, 2005. I provided assistance to Investigator Chandler in his investigation. I went with Investigator Chandler to interview Mr. Slusher at Mr. Slusher's office in Wetumpka, Alabama in October 2005.

13. I certify that the attached report is a true and correct copy of the original report that I wrote as an Alabama Forestry Commission investigator on the listed date. My initial report is also part of the complete investigation report filed by Investigator Chandler.

14. I have read the complaint of Paul Pogue and will address the substantive claims therein. First of all, I categorically deny that Mr. Pogue's race had any effect on how I treated him or handled this matter. What I saw and heard persuaded me that no criminal offense had occurred and I continue to believe that this is properly a civil matter between Mr. Pogue and Mr. Slusher.

15. Mr. Pogue references a "Jimmy Ingram" (Complaint at page 7, Paragraph 23), but Jimmy Ingram was not present at the scene. I have never met Jimmy Ingram and

I have not received any complaints of timber theft or unauthorized cutting by that individual, except for Mr. Pogue's unsubstantiated allegations.

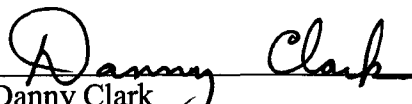
16. Mr. Pogue states that I did not seize the logging equipment that was on the subject property (Complaint at Page 6, Paragraph 20(a)). I did not seize the equipment because I did not believe that a crime had been committed. In addition, Alabama law only authorizes the seizure of equipment if a felony has been committed (Code of Alabama Section 9-13-221). Even if I had determined that Mr. Kynard or Mr. Slusher had violated the criminal statute for willfully and knowingly cutting the timber without the authorization of the owner, that offense is a misdemeanor under Alabama law (Code of Alabama Section 9-13-60) and I could not lawfully seize the equipment.

17. Similarly, there was no reason for me to try to locate the timber in question. The timber would have been transported and sold to a mill and the proceeds paid to Slusher who, in turn, would pay the landowner the monies owed under the contract.

18. With respect to Mr. Pogue's allegations that the investigation was inaccurate and a cover-up for some sort of improper conduct by International Paper Company, I deny that allegation. The investigation found no evidence that the timber was stolen and no evidence that there were any missing loads of the unauthorized cutting. To my knowledge, International Paper Company had no involvement whatsoever with the matter I investigated, and there was nothing to "cover up."

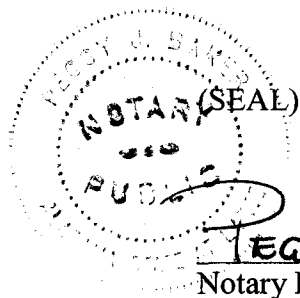
19. I have never discussed any aspects of this investigation or Mr. Pogue's allegations with any employees or representatives of International Paper Company.

The facts stated in this Affidavit are true and correct. In verification of the truth of said facts and the truth of this Affidavit, my signature is subscribed hereto.



Danny Clark
Forestry Specialist
Alabama Forestry Commission

SWORN TO and SUBSCRIBED BEFORE ME on this the 6th day
of September, 2006.





Notary Public

My commission Expires: 3/7/2010

ALABAMA

UNIFORM INCIDENT/OFFENSE REPORT

EXHIBIT B

ATTACHMENT A, P.1

ACTAM SSN		COMPLAINANT SSN		1 INCIDENT <input checked="" type="checkbox"/> OFFENSE <input checked="" type="checkbox"/>		2 CASE #		3 SFX	
ORI #		5 DATE AND TIME OF THIS REPORT		1 AM <input type="checkbox"/> 2 PM <input type="checkbox"/> 3 MIL <input type="checkbox"/>		4 AGENCY NAME		7 IF SUPPLEMENT ORIGINAL OFFENSE DATE	
0,0,3,1,0,0,0		07/08/05 08:30				Alabama Forestry Commission		M P Y	
1 REPORTED BY <input type="checkbox"/> VICTIM OR		9 ADDRESS (STREET, CITY, STATE, ZIP)		10 PHONE		11 PHONE		12 PHONE	
		221 Co. Rd. 423 Clanton, AL 35645		205 755-3042					
12 VICTIM (LAST, FIRST, MIDDLE NAME)		13 ADDRESS (STREET, CITY, STATE, ZIP)		14 PHONE		15 PHONE		16 PHONE	
Pique, Paul									
15 EMPLOYER/SCHOOL		16 OCCUPATION		17 ADDRESS (STREET, CITY, STATE, ZIP)		18 PHONE		19 PHONE	
19 RESIDENT <input type="checkbox"/> NON-RESIDENT <input type="checkbox"/>		20 INJURY <input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/>		21 RACE <input type="checkbox"/> W <input type="checkbox"/> A <input type="checkbox"/> B <input type="checkbox"/> I <input type="checkbox"/>		22 SEX <input type="checkbox"/> MALE <input type="checkbox"/> FEMALE <input type="checkbox"/>		23 HGT	
30 TYPE INCIDENT OR OFFENSE		31 DEGREE (CIRCLE)		32 DEGREE (CIRCLE)		33 STATE CODE/LOCAL ORDINANCE		34 STATE CODE/LOCAL ORDINANCE	
Unauthorized Cutting		1 2 3		1 2 3		9-13-60			
34 TYPE INCIDENT OR OFFENSE		35 DEGREE (CIRCLE)		36 DEGREE (CIRCLE)		37 STATE CODE/LOCAL ORDINANCE		38 STATE CODE/LOCAL ORDINANCE	
		1 2 3		1 2 3					
38 PLACE OF OCCURRENCE		39 SECTOR		40 POINT OF ENTRY		41 METHOD OF ENTRY		42 ASSAULT	
								43 TREATMENT FOR ASSAULT INJURY	
40 POINT OF ENTRY		41 METHOD OF ENTRY		42 ASSAULT		43 TREATMENT FOR ASSAULT INJURY		44 CODE	
1 DOOR <input type="checkbox"/> 2 WINDOW <input type="checkbox"/> 3 OTHER <input type="checkbox"/>		1 FORCIBLE <input type="checkbox"/> 2 NO FORCE <input type="checkbox"/>		1 SIMPLE <input type="checkbox"/> 2 AGGR. <input type="checkbox"/>		1 Y <input type="checkbox"/> 2 N <input type="checkbox"/>			
OCCURRED ON OR BETWEEN		45 TIME		46 WEATHER		47 LIGHTING		48 PREMISE	
06 30 05		8:00		1 CLEAR <input type="checkbox"/> 2 CLOUDY <input type="checkbox"/> 3 RAIN <input type="checkbox"/> 4 FOG <input type="checkbox"/> 5 SNOW <input type="checkbox"/> 6 HAIL <input type="checkbox"/> 7 UNK. <input type="checkbox"/>		1 NATURAL <input type="checkbox"/> 2 MOON <input type="checkbox"/> 3 ART. EXT. <input type="checkbox"/> 4 ART. INT. <input type="checkbox"/> 5 UNK. <input type="checkbox"/>		1 HWY.-ST.-ALLEY <input type="checkbox"/> 2 RAILROAD <input type="checkbox"/> 3 RESIDENCE <input type="checkbox"/> 4 CHURCH <input type="checkbox"/> 5 SCHOOL <input type="checkbox"/> 6 CONVENIENCE <input type="checkbox"/> 7 INDUSTRIAL <input type="checkbox"/> 8 SERVICE STA. <input type="checkbox"/>	
07 05 05		11:00						1 BANK <input type="checkbox"/> 2 DRUG STORE <input type="checkbox"/> 3 APT./TWN. HSE. <input type="checkbox"/> 4 SHOPPING CENTER <input type="checkbox"/> 5 PARKING LOT <input type="checkbox"/> 6 OTHER COMMER. <input type="checkbox"/> 7 OTHER <input type="checkbox"/>	
54 VERIFY FOR		55 TREAT. FOR		56 CIRCUMSTANCES		57 CODE		58 WEAPON USED	
1 Y <input type="checkbox"/> 2 N <input type="checkbox"/>		1 Y <input type="checkbox"/> 2 N <input type="checkbox"/>		HOMICIDE & ASSAULT				1 FIREARM <input type="checkbox"/> 2 KNIFE <input type="checkbox"/> 3 HANDS, FISTS, VOICE, ETC. <input type="checkbox"/> 4 OTHER DANGEROUS <input type="checkbox"/>	
RAPE EXAM		RAPE INJURY		LOCATION: RAPE				59 DESCRIPTION OF WEAPONS/FIREARMS/TOOLS USED IN OFFENSE	
2 N <input type="checkbox"/>		2 N <input type="checkbox"/>						1 HANDGUN <input type="checkbox"/> 2 RIFLE <input type="checkbox"/> 3 SHOTGUN <input type="checkbox"/> 4 UNKNOWN <input type="checkbox"/>	
60 QUANTITY		61 STOLEN, RECOVERED, LOST, FOUND OR DESTROYED (INCLUDE MAKE, MODEL, SIZE, TYPE, SERIAL NUMBER, COLOR, ETC.)		62 DOLLAR VALUE		63 RECOVERED		64 MOTOR VEHICLE	
		About 3 acres of timber cut on wrong side of road.		STOLEN DAMAGED		DATE VALUE		5 CURRENCY, NOTES	
								65 JEWELRY	
								66 CLOTHING/FURS	
								67 FIREARMS	
								68 OFFICE EQUIPMENT	
								69 ELECTRONICS	
								70 HOUSEHOLD	
								71 CONSUMABLE GOODS	
								72 LIVESTOCK	
								73 MISCELLANEOUS	
								74 CHECK CATEGORIES	
								1 STOLEN <input type="checkbox"/> 2 RECOVERED <input type="checkbox"/> 3 SUSPECTS VEH. <input type="checkbox"/> 4 VICTIMS VEH. <input type="checkbox"/> 5 UNAUTH. USE <input type="checkbox"/> 6 ABANDONED <input type="checkbox"/>	
								75 # STOLEN	
								76 LIC.	
								77 LIS.	
								78 LTY.	
								79 TAG COLOR	
								80 VIN	
								81 VYR	
								82 VMA	
								83 VMO	
								84 VST	
								85 VCO: TOP: BOTTOM:	
								86 ADDITIONAL DESCRIPTION	
								87 STOLEN MTR.	
								88 AREA STOLEN	
								89 OWNERSHIP	
								1 TAG RECEIPT <input type="checkbox"/> 2 BILL OF SALE <input type="checkbox"/> 3 TITLE <input type="checkbox"/> 4 OTHER <input type="checkbox"/>	
								90 WARRANT SIGNED	
								91 AUTO INSURER NAME (COMPANY) ADDRESS (STREET, CITY, STATE, ZIP)	
								92 PHONE	
								93 STOLEN IN YOUR JURISDICTION? <input type="checkbox"/> WHERE?	
								94 RECOVERED IN YOUR JURISDICTION? <input type="checkbox"/> WHERE?	

TYPE OR PRINT IN BLACK INK

ACJIC-32 REV. 10-90

EXHIBIT B

ATTACHMENT A, p. 2

OFFICER'S WORK PRODUCT MAY NOT BE PUBLIC INFORMATION

INCIDENT/OFFENSE REPORT CONTINUED		95 DATE AND TIME OF REPORT 07/05/05 08:30		96 CASE # 1140299090		97 SFX 1		98 OFFENDER <input type="checkbox"/> SUSPECT <input type="checkbox"/> MISSING PERSON		99 CHECK IF MULTIPLE <input type="checkbox"/>	
99 NAME (LAST, FIRST, MIDDLE) Eynard, Mark				100 NICKNAME/ALIAS				101 RACE <input type="checkbox"/> W <input type="checkbox"/> A <input type="checkbox"/> B <input type="checkbox"/> I		102 SEX <input type="checkbox"/> M <input type="checkbox"/> F	
105 ADDRESS (STREET, CITY, STATE, ZIP)				106 HGT		107 WGT		108 EYE		109 HAIR	
111 PROBABLE DESTINATION				112 ARMED? <input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> UNK.				113 WEAPON			
114 CLOTHING				115 ARRESTED <input type="checkbox"/> SCARS <input type="checkbox"/> MARKS <input type="checkbox"/> TATOOS				116 WANTED <input type="checkbox"/>			
118 NAME (LAST, FIRST, MIDDLE)				119 NICKNAME/ALIAS				120 RACE <input type="checkbox"/> W <input type="checkbox"/> A <input type="checkbox"/> B <input type="checkbox"/> I		121 SEX <input type="checkbox"/> M <input type="checkbox"/> F	
122 ADDRESS (STREET, CITY, STATE, ZIP)				123 HGT		124 WGT		125 EYE		126 HAIR	
128 PROBABLE DESTINATION				129 ARMED? <input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> UNK.				130 WEAPON			
131 CLOTHING				132 ARRESTED <input type="checkbox"/> SCARS <input type="checkbox"/> MARKS <input type="checkbox"/> TATOOS				133 WANTED <input type="checkbox"/>			
133 NAME (LAST, FIRST, MIDDLE) SEX, RACE, DOB				134 ADDRESS (STREET, CITY, STATE, ZIP)				135 RES. PHONE () ()		136 BUS. PHONE () ()	
WITNESSES				WITNESS #1 SSN				WITNESS #2 SSN			
WITNESS #3 SSN				WITNESS #4 SSN				WITNESS #5 SSN			
NARRATIVE											
<p>On July 5, 2005 I (Danny Clark) received a complaint from Mr. Paul Pogue that a logger he had hired to cut 40 acres of timber had started cutting on the wrong side of the road from where he was supposed to. Mr. Pogue had already stopped the operation when I arrived. The logger said he had only cut 4 loads. I started my investigation at that time to determine if this was a criminal matter or a civil matter.</p>											
CONTINUED ON SUPPLEMENT <input type="checkbox"/> <input checked="" type="checkbox"/>											
ASSISTING AGENCY ORI											
ASSISTING AGENCY CASE #											
SFX											
I hereby affirm that I have read this report and that all information given by me is correct to the best of my knowledge. I will assume full responsibility for notifying this agency if any stolen property or missing person hereby reported is returned.											
SIGNATURE <i>Danny Clark</i>											
137 LOCAL USE											
138 STATE USE											
139 FEDERAL USE											
140 CASE #											
141 SFX											
142 CASE #											
143 SFX											
144 CASE #											
145 SFX											
146 ADDITIONAL CASES CLOSED <input type="checkbox"/> Y <input type="checkbox"/> N											
147 CASE STATUS <input type="checkbox"/> PENDING <input type="checkbox"/> INACTIVE <input type="checkbox"/> CLOSED											
148 CASE DISPOSITION: <input type="checkbox"/> CLEARED BY ARREST (JUV.) <input type="checkbox"/> CLEARED BY ARREST (ADULT) <input type="checkbox"/> UNFOUNDED											
149 EXCEPTIONAL CLEARANCE: <input type="checkbox"/> SUSPECT/OFFENDER DEAD <input type="checkbox"/> OTHER PROSECUTION <input type="checkbox"/> EXTRADITION DENIED <input type="checkbox"/> LACK OF PROSECUTION <input type="checkbox"/> JUVENILE, NO REFERRAL <input type="checkbox"/> DEATH OF VICTIM											
149 REPORTING OFFICER <i>Danny Clark</i>											
150 ASSISTING OFFICER											
151 SUPERVISOR APPROVAL											
152 WATCH CMDR.											